99TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
99-756

AGE DISCRIMINATION IN EMPLOYMENT AMENDMENTS OF 1986

AUGUST 6, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

---

Mr. HAWKINS, from the Committee on Education and Labor, submitted the following

NEWARK PUBLIC LIBRARY
AUG 25 1986
U. S. GOVT. PUBS.
DEPOSITORY 376

REPORT

together with

SUPPLEMENTAL AND INDIVIDUAL VIEWS

[To accompany H.R. 4154]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor to whom was referred the bill (H.R. 4154) to amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Age Discrimination in Employment Amendments of 1986".

SEC. 2. AMENDMENTS TO ACT.

(a) COVERAGE UNDER GROUP HEALTH PLANS.—Subsection (g)(1) of section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623(g)(1)), as added by section 116(a) of the Tax Equity and Fiscal Responsibility Act of 1982, is amended by striking out "through 69" each place it appears and inserting in lieu thereof "or older".

(b) TECHNICAL AMENDMENT.—Subsection (g) of section 4 of the Age Discrimination in Employment Act of 1967, as added by section 802(b)(2) of the Older Americans Act Amendments of 1984, is amended by striking out "(g)(1)" and inserting in lieu thereof "(h)(1)".

71-006 O

READEX FICHE
best copy available
Y1.1/8:

(c) REMOVAL OF MAXIMUM AGE LIMITATION.—Section 12 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631) is amended—

(1) in subsection (a) by striking out "but less than seventy years of age", and

(2) in subsection (c)(1) by striking out "but not seventy years of age,".

SEC. 3. STUDY AND PROPOSED GUIDELINES RELATING TO POLICE OFFICERS AND FIREFIGHTERS.

(a) STUDY.—Not later than 18 months after the date of enactment of this Act, the Secretary of Labor and the Equal Employment Opportunity Commission, jointly, shall——

(1) conduct a study——

(A) to determine whether physical and mental fitness tests are valid measurements of the ability and competency of police officers and firefighters to perform the requirements of their jobs,

(B) if such tests are found to be valid measurements of such ability and competency, to determine which particular types of tests most effectively measure such ability and competency, and

(C) to develop recommendations with respect to specific standards that such tests, and the administration of such tests, should satisfy, and

(2) submit a report to the Speaker of the House of Representatives and the President pro tempore of the Senate that includes——

(A) a description of the results of such study, and

(B) a statement of the recommendations developed under paragraph (1)(C).

(b) PROPOSED GUIDELINES.—Not later than 2 years after the date of the enactment of this Act, the Equal Employment Opportunity Commission shall propose, in accordance with subchapter II of chapter 5 of title 5 of the United States Code, guidelines for the administration and use of physical and mental fitness tests to measure the ability and competency of police officers and firefighters to perform the requirements of their jobs.

SEC. 4. EFFECTIVE DATE AND APPLICATION OF AMENDMENTS.

This Act and the amendments made by section 2 of this Act shall take effect on January 1, 1987, except that with respect to any employee who is subject to a collective-bargaining agreement—

(1) which is in effect on June 30, 1986,

(2) which terminates after January 1, 1987,

(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)), and

(4) which contains any provision that would be superseded by such amendments, but for the operation of this section,

such amendments shall not apply until the termination of such collective bargaining agreement or January 1, 1990, whichever occurs first.

BACKGROUND

The Age Discrimination in Employment Act (ADEA) was enacted by Congress in 1967 to prohibit discrimination in employment because of age in such matters as hiring, job retention, compensation and other terms, conditions or privileges of employment. The ADEA protects workers who are at least 40, but less than 70 years of age, from discrimination on the basis of age by most employers of 20 or more persons (including state and local governments), employment agencies, and labor organizations that have 25 or more members. Most Federal employees (and applicants) who are at least 40 years old are also covered, but without an upper age limit.

Through passage of the ADEA, Congress intended to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment and to help employers and workers find ways of meeting problems arising from the impact of age on employment.

However, Congress realized that certain exemptions and considerations should be made in passing this legislation by outlining that an employer may take actions otherwise deemed unlawful:

(1) where age is a bona fide occupational qualification reasonably necessary to normal operations of a particular business;

(2) where differentiation is based on reasonable factors other than age;

(3) to observe the terms of a bona fide seniority system or a bona fide employee benefit plan such as a retirement, pension or insurance plan, with the qualification that no seniority system or benefit plan may require or permit the involuntary retirement of any individual who is covered by the ADEA; and

(4) where an employee is discharged or disciplined for good cause.

The States are free to pass and enforce their own age discrimination laws which meet or exceed the federal provisions, and most States have done so. To date thirteen States have enacted statutes specifically banning mandatory retirement for public and private sector employees. Nineteen other States have age discrimination laws that protect employees' right to work until age 70.

In 1978, Congress amended the ADEA by raising the upper age limit in the Act from 65 to 70 years of age for most non-Federal workers and eliminating the upper age limit for most Federal civilian workers. However, several groups of Federal employees, including foreign service officers, Central Intelligence Agency employees, law enforcement officers and firefighters, and air traffic controllers do have various mandatory retirement ages, set forth in separate laws that remain in effect. It also provided two exceptions with regard to mandatory retirement for certain bona fide executive or high policy-making employees in private industry who may be compulsorily retired at age 65; and until July 1, 1982, tenured faculty at institutions of higher education could be compulsorily retired at age 65.

During the 98th Congress two amendments were incorporated as part of the Older Americans Act Amendments of 1984. One amendment assured that the protections of the ADEA are applicable to U.S. Citizens employed by an American employer in a workplace outside the United States. The other raised the pension level for business executives exempted from the ADEA from $27,000 to $44,000.

Congress, in the 1978 amendments to the ADEA, required the Secretary of Labor as well as the Civil Service Commission (now Office of Personnel Management) to study the effects of raising or eliminating the age of mandatory retirement. The final report submitted to Congress by the Department of Labor in 1982 estimates that in the year 2000 approximately 200,000 additional older workers aged 65 and over would be in the labor force if mandatory retirement was eliminated, and other factors such as pension and social security did not change. The DOL report indicated that the anticipation of mandatory retirement often has the effect of causing employees to retire earlier than the actual mandatory retirement age.

According to the DOL report the previous rise in allowable mandatory retirement from age 65 to 70 would have only a small effect on the availability of jobs for younger, female and minority workers. Although no effects on such groups were presented for elimination of age 70 limit, the report does indicate that the impact of total elimination of mandatory retirement would be similar to the impact on the labor force of the increase from age 65 to 70. Few employers reported that older workers remaining on the job after the 1987 amendments were causing "promotional blockages or slowdowns."

There is broad public support for the full elimination of mandatory retirement. A survey of the general population by Louis Harris and Associates for the National Council on Aging found that close to 90 percent of those interviewed agreed with the statement, "Nobody should be forced to retire because of age if he wants to continue working and is still able to do a good job." Only 37 percent agreed that "Older people should retire when they can to give younger people more of a chance on the job." A survery released in January 1985 by *USA Today* showed that 70 percent of Americans disapprove of mandatory retirement. Close to half of the companies responding to an AARP survey support the abolishment of mandatory retirement, with smaller firms showing greater support for the concept. The substantial opposition to mandatory retirement policies by the American public is one indicator of the strong sentiment against arbitrary age bias in employment.

H.R. 4154 enjoys the strong support of many national organizations including the American Federation of Teachers; American Association for International Aging; American Association of Retired Persons; American Society on Aging; Associacion Nacional Pro Personas Mayores; Association for Gerontology in Higher Education; Catholic Golden Age; Gray Panthers; National Association of Area Agencies on Aging; National Association of Foster Grandparents Program Directors; National Association of Mature People; National Association of Meal Programs; National Association of Older American Volunteer Program Directors; National Association of RSVP Directors, Inc.; National Association of Senior Companion Project Directors; National Association of State Units on Aging; National Caucus and Center on Black Aged, Inc.; National Council of Senior Citizens; National Council on the Aging; National Interfaith Coalition on Aging; Older Women's League; Retired Members Department/United Auto Workers; Villers Advocacy Associates; and AFL–CIO Department of Occupational Safety, Health and Social Security.

During the 99th Congress, eleven bills relating to mandatory retirement under ADEA have been introduced. Six of these bills were introduced in the House of Representatives and five in the Senate. Eight of these bills would eliminate the mandatory retirement age limitation, while three bills would provide retirement exemptions under the Act.

Eliminating age-based mandatory retirement is not unprecedented action. The 1978 amendments to the Act removed the upper age limit for most Federal workers. In addition, several States have prohibited mandatory retirement and/or other age discrimination

in employment without an upper age limit in public and/or private employment.

Committee Action

H.R. 4154, the Age Discrimination in Employment Amendments of 1986, was introduced on February 6, 1986 by Representative Claude Pepper.

A hearing was held on H.R. 4154 and related legislation by the Subcommittee on Employment Opportunities on March 12, 1986. The Subcommittee heard testimony from Representative Claude Pepper and other public witnesses. Since the 97th Congress, the Subcommittee has held three hearings on legislation amending the Age Discrimination in Employment Act.

H.R. 4154 was considered by the Education and Labor Committee on July 24, 1986. At that time, a motion to discharge the Subcommittee on Employment Opportunities from further consideration was approved. The Committee ordered the bill, as amended, favorably reported by voice vote.

Need for the Legislation

Arthur Flemming, former Secretary, U.S. Department of Health, Education and Welfare, former Commissioner on Aging and former Chairman of the U.S. Commission on Civil Rights, testifying before the Subcommittee on Employment Opportunities in May of 1984, stated that "a compelling case can be made for abolishing age 70 as the upper age limit for protection under ADEA." Dr. Fleming testified that:

(1) Freedom from discrimination based on age is no more inherently defensible at age 70 than at age 65. The principle, that of requiring employers to make judgments based on individual qualifications, remains the same at any age; it is the same principle that undergirds prohibitions of discrimination based on race, sex and other group-shared characteristics.

(2) The proposed change would help in the retention of some persons with highly developed technical skills in an economy that increasingly needs those skills.

(3) Mandatory retirement harms the Social Security system. Workers who would otherwise continue in employment, contributing to trust funds, and shortening the time during which they would draw benefits, are now retiring and beginning to draw funds from Social Security. Savings are estimated at .02% of taxable payroll in the year 2020, or in present-day terms, $700,000 a year.

(4) The ADEA now leaves unprotected a class of persons who need it the most—the elderly poor, who must (if able) continue working beyond age 70 because they lack other sources of adequate income. Often employers will forcibly retire all employees at age 70, even the lowest paid workers not converted by the company's pension plan.

(5) Some 800,000 workers over age 70 would gain important job protections. In addition, the Labor Department has estimated that 200,000 more older workers would remain in the work force by the year 2000 than under current law.

(6) The proposal has overwhelming public support. In the NCOA-Harris survey, nine of ten Americans of all age believe that no one should be required to retire because of age if he or she wants to continue to work and is capable of continuing.

A new study published in the *Journal of Applied Psychology*, found that contrary to popular belief, older workers can be just as productive as their younger counterparts. In fact, for many workers, job performance actually improves with age. Psychologists David A. Waldman, Ph.D., and Bruce J. Avolio, Ph.D., of the State University of New York, analyzed previous research on the relationship between age and job performance. Their review of 13 studies, conducted between 1940 and 1983, revealed little support for "the somewhat widespread belief that job performance declines with age," they report. On the contrary, many of their results "pointed to performance increments with increasing age," especially in objective measures of productivity. They found that "although chronological age may be a convenient means for estimating performance potential, it falls short in accounting for the wide range of individual differences in job performance for people at various ages." Using chronological age as a bona fide occupational qualification for employment decision making, they said, is most likely a mistake from a legal, ethical and organizational effectiveness prospective. This growing recognition has led most employers to realize that arbitrary age limits are not conclusive determinations of non-employability and that employment decisions regarding older persons should be based on individual assessment of each applicant's or employee's potential or ability.

The bona fide occupational qualification (BFOQ) standard applied in ADEA cases is similar to that applied in Title VII cases involving sex, race, naitonal origin or religious discrimination. The provision recognizes that certain mental or physical capabilities may decline with age, so that in some jobs with unusually high demands, age can be a factor considered in hiring and retaining employees. Examples of such jobs generally include law enforcement and firefighting persons, as well as airline pilots.

The issue of whether public safety officers should be treated like other employees under ADEA arose after the Supreme Court in *EEOC* v. *Wyoming* determined that the State's game wardens were covered by the ADEA. This ruling upheld the constitutionality of Congress's mandatory coverge of state and local governments under the ADEA as a valid exercise of Congress's power to regulate interstate commerce. Wyoming's policy of mandatory retirement at age 55 for State game wardens was ruled invalid unless the State could show that age is a BFOQ for game wardens.

In testimony before the Subcommittee on Employment Opportunities in May 1984, Dr. Paul Davis, an exercise physiologist, testified that his research showed that age does not determine who can safely and effectively perform the duties of a law enforcement officer or firefighter. The EEOC also submitted testimony to the Subcommittee for inclusion in the hearing record which opposed legislation that would allow States and their political subdivisions to refuse to hire or to retire law enforcement officers and firefighters

on the basis of their age because it is inconsistent with the goals of the Age Discrimination in Employment Act.

Declining health and the availability of retirement income are generally considered to be major factors in retirement decisions. Labor Department data indicate that 51 percent of workers age 40 to 69 face a retirement age, usually 70. Thus, more than 20 million workers could be forced to retire simply because of their age. Most of these workers, however, will leave the labor force before they reach the mandatory retirement age, which means that many fewer workers are directly affected by such policies. However, the numbers are not the most fundamental concern of mandatory retirement. As Representative Pepper has stated "What we are talking about is a human right to make a living. We don't allow anybody to be denied the right to make a living because of sex, as we used to. We don't allow anybody to be denied the right to make a living because of race, as we used to. We have now seen the irrelevance of these two characteristics to the employability of an individual. And, yet, we have carried on something of this myth." Mandatory retirement and other employment discrimination based on age alone is contrary to equal employment opportunity.

H.R. 4154 would in no way force workers to continue working past age 70. It would in no way force employers to retain workers who are no longer competent. H.R. 4154 would ensure that those Americans age 70 and over who desire to continue working and are able to continue performing in a competent fashion are not denied the basic human right to earn a living.

Organizations for the aged and others in agreement with Representative Pepper argue that judging a person's qualifications for a job solely on the basis of age, without regard to fitness for a job, is inequitable and that chronological age alone is a poor predicator of ability to perform a job. Older workers discriminated against may lose income. In fact, the poverty rate among seniors who don't work is three times that of those who do. Loss of status associated with the loss of a job may result in the deterioration of mental and physical health for the older person. Some say that the loss of skills and experience from the work force due to mandatory retirement results in a loss to our nation's productivity and gross national product.

Recently there has been a growing recognition among employers that older employees are more responsible workers. A recent survey of 400 businesses by the American Association of Retired Persons underscored the fact that older workers are productive, committed to quality and invaluable for their knowledge and experience. Ninety percent of those surveyed stated older workers are cost-effective.

In testimony earlier this year, before the Subcommittee on Employment Opportunities, Dr. Johnson of the American Association of Retired Persons stated "the arguments justifying raising the age gaps for mandatory retirement from 65 to 70 in 1978 are the same today for eliminating mandatory retirement entirely. It is a question of whether we as a society are willing to deny older Americans their basic rights to remain as productive members of society that is insured to every other person. The overwhelming majority of Americans, regardless of age, have decided that the answer to that

question must be 'no'. Mandatory retirement based on age must be eliminated."

Major Provisions of H.R. 4154

The purpose of H.R. 4154, the Age Discrimination in Employment Amendments of 1986, is to promote the employment of older persons based on ability rather than age and prohibit arbitrary age discrimination in employment.

REMOVAL OF MAXIMUM AGE LIMITATIONS

The bill seeks to eliminate mandatory retirement by striking all references to upper age limitations.

COVERAGE UNDER GROUP HEALTH PLANS

The Committee bill requires continuation of coverage under an employer's group health plan for workers aged 70 and above. The Tax Equity and Fiscal Responsibility Act of 1982 and the Deficit Reduction Act of 1984 amended the ADEA to require that an employer must offer to an employee above age 65 through 69 (or who has a spouse age 65 through 69) the same group health plan benefits offered to employees under age 65. Subsequent to the introduction of this bill, the upper age limit of 69 was deleted in the Consolidated Omnibus Budget Reconciliation Act (P.L. 99–272).

POLICE OFFICER AND FIREFIGHTER STUDY AND GUIDELINES

The bill requires the Secretary of Labor and the Equal Employment Opportunity Commission to conduct a study to be submitted to Congress to determine whether physical and mental fitness tests are valid measurements of the ability and competency of police officers and firefighters to perform the requirements of their jobs. The study will also include recommendations regarding the most effective tests as well as specific standards under which these tests should be administered. The bill requires the EEOC to issue, not later than two years after the date of enactment, guidelines for the administration and use of physical and mental fitness tests to measure the ability and competency of police officers and firefighters to perform the requirements of their jobs.

EFFECTIVE DATE

The effective date of this Act is January 1, 1987. However, for collective-bargaining agreements with a labor organization which are in effect on June 30, 1986 or which terminate after January 1, 1987, the amendments would not apply until termination of the collective bargaining agreements on January 1, 1990, whichever comes first.

Oversight Findings

With reference to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee reports that no findings or recommendations of the Committee on Government Operations were received during the 99th Congress with reference to the sub-

ject matter addressed by H.R. 4154. There are no oversight findings to report to conform with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives.

Cost Estimate

The Congressional Budget Office (CBO) has provided the Committee on Education and Labor with the following estimate on the costs involved in implementing this legislation. The Committee concurs with and adopts CBO's estimate, pursuant to Clause 7 of Rule XIII of the Rules of the House of Representatives. No other cost estimates have been received from any Federal agencies or departments.

Congressional Budget Office Cost Estimate

1. Bill number: H.R. 4154.
2. Bill title: Age Discrimination in Employment Amendments of 1986.
3. Bill status: As ordered reported by the House Committee on Education and Labor on July 24, 1986.
4. Bill purpose: To amend the Age Discrimination in Employment Act of 1967 to remove the maximum age limitation applicable to employees who are protected under such Act, and for other purposes.
5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1987	1988	1989	1990	1991
Budget authority	*	*	*	2	4
Outlays	−1	−5	−10	−20	−25

The costs of this bill fall within functions 570 and 650.

Basis of estimate. H.R. 4154 would eliminate the current minimum mandatory retirement age of 70, effective January 1, 1987. While there are likely to be some behavioral changes in response to the elimination of a mandatory retirement age, estimates of the magnitude of the response are imprecise at best. A Department of Labor (DOL) study published in 1982 indicated that perhaps as many as 200,000 additional older workers might be in the labor force by the year 2000 if mandatory retirement ages were prohibited. This estimate could be too low or too high for several reasons. One reason this could be too low is that no additional workers were assumed for ages over 70, ages when the elimination of mandatory retirement might be expected to be a significant incentive. However, the estimate of additional workers could be too high, because the tendency of older Americans to work continues to decline when compared to the assumptions used in the DOL report. In addition, the report was completed prior to the enactment of the Social Security Amendments of 1983 which contained two provisions increasing incentives for work. After 1990, the delayed retirement credit will become more attractive and the earnings test will be less stringent.

For this estimate, we have assumed that older workers would respond slowly to the change in the mandatory retirement age because most individuals develop their retirement plans well before they actually stop work. Therefore, although as many as 200,000 additional older workers might be in the labor force by the year 2000, we assume that fewer than 1,000 more older persons would work in 1987 with this figure growing to about 23,000 in 1991. In addition, we have assumed that in the early years a much larger percentage of those affected would be age 70 or older, beginning at 90 percent of the additional workers in 1987 and declining to 70 percent in 1991.

The benefit effects in Social Security are the net impact of the earnings test reductions and the additional benefits resulting from the delayed retirement credits for workers between the ages of 62 and 70. Assuming that the workers encouraged to continue working as a result of eliminating the mandatory retirement age receive benefits and earn wages that are similar to workers currently affected by the earnings test, their average benefits would be about $8,000 in 1987, of which 62 percent of benefits going to those under age 70 would be withheld because of the earnings test. Benefits for those delaying their retirement are assumed to rise by 5 percent for each additional year of earnings. Outlays for Social Security benefits are estimated to be reduced by less than $1 million in 1987, and by about $20 million in 1991.

Medicare outlays would also be reduced through the existing "working-aged" provisions. Under these provisions, employers must offer workers 65 and older—and younger workers with spouses 65 and over—the same group health insurance coverage as that provided to other employees. If the employee elects to be covered under the employer plan, Medicare becomes the secondary payor. The estimated Medicare effects are roughly equal to 25 percent of the Social Security savings. The smaller Medicare savings results because Medicare costs per enrollee are much smaller than the average Social Security benefits that are assumed in this estimate. Moreover, some of the additional older workers would not be eligible for employer-provided health insurance, and others who are offered the coverage will decline. The absence of an effective enforcement mechanism to verify employer-provided coverage would also reduce the savings. The estimated Medicare savings from eliminating the minimum mandatory retirement age would be negligible in 1987 and grow to about $5 million in 1991. Relative to the CBO baseline, the elimination of the mandatory retirement age would not affect federal revenues.

Section 3 of H.R. 4154 would require the Secretary of Labor and the Equal Employment Opportunity Commission, jointly, to conduct a study of physical and mental fitness tests given to police officers and firefighters. The objective of the study would be to determine valid measurements of ability and competency and to determine specific standards that the tests should satisfy. This study would be reported to the Speaker of the House of Representatives and the President pro tempore of the Senate not later than 18 months after the date of enactment of this Act. Both the Department of Labor and the Equal Employment Opportunity Commission report that information of this kind is readily available, and

therefore undertaking this study would result in no significant cost to the federal government.

6. Estimated cost to State and local government: This bill would not directly affect the budgets of state and local governments.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by Michael Pogue.

10. Estimate approved by C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives and after reviewing the Congressional Budget Office cost estimate, the Committee expects this legislation will not have any significant inflationary impact.

Section-by-Section Analysis of H.R. 4154

SECTION 1. SHORT TITLE

This section cites the Act as the "Age Discrimination in Employment Amendments of 1986".

SECTION 2. AMENDMENTS TO THE ACT

Section 2 specifies the elimination of mandatory retirement age by (1) striking out the reference to the age 69 upper age limitation in group health plans and (2) removing the maximum retirement age limitation by striking out references to the upper age of 70.

SECTION 3. STUDY AND PROPOSED GUIDELINES RELATING TO POLICE AND FIREFIGHTERS

This section requires the Secretary of Labor and the Equal Employment Opportunity Commission to conduct a study not later than 18 months after the date of enactment of this legislation to determine whether physical and mental fitness tests are valid measures of the ability and competency of police officers and firefighters to perform the requirements of their jobs. This section also requires the study to determine which particular tests are most effective and to develop recommendations on specific standards for the administration of the tests. A report regarding this study must be submitted to Congress which includes a description of the results of such study and a statement of the recommendations developed.

Section 3 also requires the EEOC to issue within two years after the date of enactment guidelines for the administration and use of physical and mental fitness tests to measure the ability and competency of police officers and firefighters to perform the requirements of their jobs.

SECTION 4. EFFECTIVE DATE AND APPLICATION OF AMENDMENTS

Section 4 states that this amendment shall take effect on January 1, 1987. However, for collective bargaining agreements with a labor organization which are in effect on June 30, 1986 and which

terminate after January 1, 1987, the amendments shall not apply until the termination of such collective bargaining agreement or January 1, 1990, whichever occurs first.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

* * * * * * *

PROHIBITION OF AGE DISCRIMINATION

SEC. 4. (a) * * *

* * * * * * *

(g)(1) For purposes of this section, any employer must provide that any employee aged 65 [through 69] *or older,* and any employee's spouse aged 65 [through 69] *or older,* shall be entitled to coverage under any group health plan offered to such employees under the same conditions as any employee, and the spouse of such employee, under age 65.

(2) For purposes of paragraph (1), the term "group health plan" has the meaning given to such term in section 162(i)(2) of the Internal Revenue Code of 1954.

[(g)(1)] [1] *(h)(1)* If an employer controls a corporation whose place of incorporation is in a foreign country, any practice by such corporation prohibited under this section shall be presumed to be such practice by such employer.

* * * * * * *

AGE LIMITATION

SEC. 12. (a) The prohibitions in this Act shall be limited to individuals who are at least 40 years of age [but less than 70 years of age].

* * * * * * *

(c)(1) Nothing in this Act shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age [but not 70 years of age,] and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profitsharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee, which equals, in the aggregate, at least $44,000.

* * * * * * *

SUPPLEMENTAL VIEWS

Although our opinions on the merits of H.R. 4154 may vary, we share the view that it is fundamentally unfair to require private sector employers and State and local governments to abide by Federal age discrimination rules from which the Federal government has in some instances exempted its own employees. During the Committee markup of H.R. 4154, an amendment was offered that would have amended Section 15 of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 633a, so as to override mandatory retirement provisions for various Federal employees. This amendment was ruled out of order, falling outside the jurisdiction of the Committee. We disagree with that ruling, but will limit our discussion herein to the merits of the amendment.

As currently in force, the ADEA proscribes age discrimination in employment for non-Federal workers, including State and local government employees, between ages 40 and 70. This means that these employees cannot be mandatorily retired because of age before they reach age 70. There is an exception to this rule: mandatory retirement at a specified age prior to 70 may be permitted when an employer can demonstrate that age is a "bona fide occupational qualification [BFOQ] reasonably necessary to the normal operation of the particular business." The BFOQ exception simply means that an employer must demonstrate a link between the aging process and the demands of a particular job. To prove in court that age is a BFOQ for a particular job, the employer must show that (1) age is reasonably necessary to the essence of its business and (2) that the employer has reasonable cause, *i.e.*, a factual basis, to believe that all or substantially all persons within the class would be unable to perform safely and efficiently the duties of the jobs involved, or that it is impossible or impractical to deal with persons over the age limit on an individualized basis. See *Usery* v. *Tamiami Trail Tours, Inc.*, 531 F.2d 224, 235–36 (5th Cir. 1976). For Federal workers, a somewhat different set of rules applies. These rules are set forth in Section 15 of the Act, 29 U.S.C. 633a. In general, there is no upper age limit for Federal employees; they may never be mandatorily retired solely because of age. An exception is made in instances where age can be shown to be a BFOQ, and the Equal Employment Opportunity Commission is authorized to establish exceptions to the rule of nondiscrimination when it has established that age is a BFOQ for a particular job.

Despite the ADEA's mandate of nondiscrimination for Federal employees, some classes of Federal workers are still subject to mandatory retirement pursuant to other statutes. Among the Federal employees subject to such laws are Federal law enforcement officers and firefighters (who, pursuant to 5 U.S.C. 8335(b), must generally retire at age 55) and air traffic controllers (required by 5 U.S.C. 8335(a) to retire at age 56).

State and local governments that established mandatory retirement requirements for their public safety officers attempted to rely on the mandatory retirement requirements of Federal law as a basis for their action. They argued that the Federal retirement statutes establish age as a BFOQ for public safety officers and that the congressional finding that age is a BFOQ for certain Federal employees should be determinative with respect to non-Federal employees in the same occupation. The Supreme Court, however, has rejected this argument. See *Johnson* v. *Mayor & City Council of Baltimore,* 105 S.Ct. 2717 (1985). The decision to require Federal safety officers to retire at an early age, the Court concluded, was not based on bona fide occupational qualifications relating to their jobs. Nor was it predicated on a congressional finding that the workers grow ineffective or inefficient at a certain point in life. Moreover, the statute calling for early retirement of Federal law enforcement officers and firefighters was enacted two decades before the ADEA and its BFOQ provisions had been approved by Congress. Its legislative history simply does not indicate why Congress settled on age 55 as the cutoff age.

The Federal statutes requiring retirement for Federal firefighters, law enforcement officers, and other employees represent a special rule for these Federal workers. Many state and local governments would like to pass similar statutes. (In fact, an amendment that would have exempted State and local public safety officers from the provisions of the ADEA, thus permitting mandatory retirement for these jobs, was offered, and rejected, during the mark-up of H.R. 4154.) The ADEA, however, requires that these governments must demonstrate that age is a BFOQ. The Federal government has never demonstrated a connection between age and job performance for the Federal positions subject to mandatory retirement requirements. Accordingly, State and local officials view the Federal retirement statutes as another example of the Federal government's refusal to abide by the rules it has laid down for States. We share this view, and we hope that—whatever the fate of H.R. 4154—the House will agree that it is time for the Federal government, including the Congress, to live by the same age discrimination requirements it imposes on other employers.

JIM JEFFORDS.
BILL GOODLING.
STEVE GUNDERSON.
STEVE BARTLETT.
TOM TAUKE.
JOHN R. MCKERMAN, JR.
DICK ARMEY.

INDIVIDUAL VIEWS OF THE HONORABLE MARIO BIAGGI OF NEW YORK

As an original co-sponsor of H.R. 4154, I implore the full House to pass this bill during this session. There are a group of senior citizens in our nation for whom passage of this legislation is absolutely vital. I refer to those people who have reached or are about to reach the age of 70. These individuals face mandatory retirement, the last remaining vestige of age-based discrimination in our nation. There are some among this group who were the beneficiaries of the protections afforded by legislation adopted by this same Committee in 1977. That measure put an end to mandatory retirement at age 65. It ended it entirely for those in federal service and raised the age to 70 for most private sector employees. The cruel fact of life is—those same people who we protected at age 65 are again victims when they reach 70. We must act to demonstrate our total commitment to outlaw age based discrimination in our nation.

This legislation is essentially a clean bill which it must be to be a credible product. Mandatory retirement is wrong and should not be an acceptable policy in any line of work. Ability, not age; competency, not chronology should be the criteria employed for a person to continue and or even begin work. That is the principle behind H.R. 4154. It would remove the maximum age limitation applicable to employees who are protected under such Act. It does not force a person to work past 70 who does not want to. It does allow a person to work past 70 should they want to and should they be capable of doing so.

The House Education and Labor Committee has a long and proud history of outlawing employment based discrimination where it is found to exist. We as a nation view sexism and racism as discrimination. So, we must with ageism. Mandatory retirement and ageism are synonymous and have no place in our society.

I wish to pay special tribute to the inspirational leadership provided on this issue by our beloved friend and colleague, Claude Pepper, the author of H.R. 4154. He is an advocate and a champion of the rights of senior citizens to remain in the work force. His very presence and commitment provides the best illustration that age serves as no barrier to continued productivity.

MARIO BIAGGI.

INDIVIDUAL VIEWS OF THE HONORABLE MARGE ROUKEMA

I am in favor of H.R. 4154, an amendment to the Age Discrimination in Employment Act of 1967, which removes the maximum age limitation of 70 contained in the Act. Older persons should have the opportunity to remain in the workforce if they have they ability, desire, and/or need to do so.

My purpose in writing these Individual Views is to state my strong support of a second amendment to the Act which would exempt state and local firefighters and law enforcement officers from the hire and discharge provisions. This amendment was offered by Mr. Murphy in Committee but was not adopted. Its language was identical to that contained in H.R. 1435, which was introduced by Mr. Hughes in March 1985, and cosponsored by over eighty members, including myself. The amendment would grant state and local governments the needed flexibility to make their own judgments about whether the physical rigors of the duties performed by their public safety officers require the setting of mandatory hiring and retirement ages.

It cannot be disputed that there are some occupations affecting public safety which have unique demands requiring a certain amount of physical ability. Congress, in fact, has left standing laws establishing mandatory retirement ages and minimum and maximum hiring ages for certain federal government occupations, even though it removed the age cap for the retirement of federal employees in 1978. Thus, federal law enforcement and firefighting personnel must retire at age 55, air traffic controllers must retire at age 56, Foreign Service officers must retire at 65, and certain Central Intelligence Agency employees must retire at 50. Commercial airline pilots are required by the Federal Aviation Administration to retire at 60. If the federal government is permitted to make special exceptions to the prohibition against mandatory retirement for particular occupations, then it is only fair to provide the states with the same ability to make exceptions which they feel are necessary to protect public safety.

It is a well known fact that mental and physical abilities decrease with age. However, expert medical testimony provided both in trials on this issue and in Congressional hearings has established that medical science has not advanced to the point where age limitations can be safely removed in occupations affecting public safety. Dr. Donald Flinn of Texas Tech University Health Sciences Center, for example, testified in a hearing before the Select Committee on aging that no age-related psychophysiological index of intellectual and psychomotor functions currently exist. Others have similarly testified that it is not possible to detect latent coronary artery disease, a disease which is much more prevalent at older ages, on an individualized basis. Further, it is estab-

lished that exercise stress tests cannot reliably identify those suffering from significant coronary artery disease. In fact, a study of 900 Indiana State Police officers showed that 94% of the persons suffering sudden cardiac death or acute myocardial infraction had a "normal" exercise test result. In short, there is at present no accurate means of assessing individual mental and physical functioning.

Nevertheless, there has been an explosion of lawsuits against state and local governments challenging the validity of mandatory hiring and retirement ages for public safety officers. As of March 1986, the Equal Employment Opportunity Commission has filed suit against at least thirty-three state and local governments. In Indiana alone, there are more than fifty separate public safety entities under suit by the EEOC. Many additional suits have been filed by private plaintiffs as well. Decisions are split on these cases on the central issue of whether age is a bona fide occupational qualification for public safety officer jobs. Defending these suits placed enormous burdens on state and local governments in terms of time and money spent on litigation. Those governmental bodies which do not have the financial resources to defend their age limitations must consider abandoning them, thereby possibly risking public safety.

The above clearly shows that state and local governments must be given the same freedom that the federal government has to make their own determinations regarding mandatory age limitations for hiring and retiring public safety officers. This is more true than ever when we consider the widespread support that exists for H.R. 4154, a bill making it illegal for employers to force employees of any age to retire.

MARGE ROUKEMA.

○